

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2004

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Nares, and The Honorable Associate Justices
James McIntyre and Terry O'Rourke
Clerk: D E Moore

D040866 Bernardo, et al. v. Planned Parenthood Federation America et al.

Cause called on merits. Parick T. Gillen, Esq. argued for appellant. James E. McElroy, Esq. argued for respondent. Mr. Gillen replied. Cause submitted.

D040186 Bernardo et al. v. Planned Parenthood Federation of America et al.

Cause called on merits. Patrick T. Gillen, Esq. argued for appellant. James E. McElroy, Esq. argued for respondent. Mr. Gillen replied. Cause submitted.

Court recessed at 9:50 a.m. until 1:30 p.m.

Cause called on merits.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and Terry O'Rourke
Clerk: D E Moore

D041009 Wilkerson, et al. v. Sullenger

Cause called on merits. Richard D. Ackerman, Esq. argued for appellant. James E. McElroy, Esq. argued for respondent. Mr. Ackerman replied. Cause submitted.

D041424 Gimbrone v. Department of Motor Vehicles et al.

Cause called on merits. Joseph L. Gimbrone argued for appellant in pro per. Chris A. Knudsen, Deputy Attorney General argued for respondent. Mr. Gimbrone replied. Cause submitted.

D039832 Morris v. San Diego Gas & Electric Company et al.

Cause called on merits. No appearance by appellant. Steven M. Polito, Esq. was present in oral argument for respondent, Pacific Bell and submitted on the briefs. Eugene Francis West, Esq. was present in oral argument for respondent, Coxcom, Inc., and submitted on the briefs. Beth Eagleson, Esq. was present in oral argument for respondent, San Diego Gas & Electric Company and submitted on the briefs. Cause submitted.

Court recessed at 2:30 p.m. until Tuesday, January 13, 2004 at 9 a.m.

D041811 Gray Cary Ware & Freidenrich v. Vigilant Insurance Company

The order is affirmed. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2004 (Cont'd)

D043174 Myra P. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

By failing to file a timely petition for writ relief, the notice of intent as to Manuel N. is deemed to be abandoned. The case is dismissed.

D041023 People v. Johnson

It is ordered that the opinion filed herein on December 12, 2003, be modified as follows. There is no change in judgment. The appellant's petition for rehearing is denied.

D040696 Duong v. Le et al.

The petition is denied.

D040834 Onceblue Enterprises, Inc., v. Kiewit Pacific Company et al.

The petition is denied.

D043430 Doerr v. Superior Court of San Diego County/Lutheran Social Services of Southern California et al.

The petition is denied.

D043489 Romero v. Superior Court of San Diego County/People

The petition is denied.

D040819 Dez Construction v. Calexio Unified School District/Denton

The request for publication of the opinion is denied.

D042690 In re Nellie G., a Juvenile

The order denying Marcos's section 388 petition and the judgment terminating his parental rights are affirmed. Irion, J.; We Concur: McConnell, P. J., Aaron, J.

D043460 In re De La Fuente on Habeas Corpus

The petition is denied.

D042954 Hines v. Scripps Health

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D043371 Beckwith v. Superior Court of San Diego County/McGee et al.

The petition is denied.

D043398 Marsh v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2004 (Cont'd)

D052546 American Interbanc Mortgage, LLC, v. E-Lenders Report Card, Inc., et al.

Upon written request filed by appellant American Interbanc Mortgage LLC, appeal is dismissed. (Cal. Rules of Court, rule 20(c)(2)). The briefing sequence ordered on September 23, 2003 is vacated. The appellants' opening briefs and joint appendix or appendixes of E-Lenders Report Card, Inc., Emil Goshen, Alan Teegardin and Daniel Bricker; and Malan Financial Alliance dba Payless Home Loans and Nancy Bricker are due 30 days from the date of this order. The respondent's brief of American Interbanc Mortgage, LLC and the appellants' reply briefs of E-Lenders Report Card, Inc., Emil Goshen, Alan Teegardin and Daniel Bricker; and Malan Financial Alliance dba Payless Home Loans and Nancy Bricker are due in rule time.

D043445 In re Herculano Delgadillo on Habeas Corpus

The request for counsel and petition are denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D042818 Coleman v. California Unemployment Insurance Appeals Board

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).
The appeal is dismissed.

D038404 Ellis et al. v. Louie/Hogan

The judgment and posttrial orders are affirmed. The parties shall bear their own costs on appeal.
O'Rourke, J.; We Concur: Benke, Acting P.J., Nares, J.

D041945 People v. Parker

Judgment affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D041510 Shaw v. Cal West Alpine Associates et al.

Upon written stipulation filed the parties to the appeal, the appeals are dismissed and the remittitur is
ordered to issue immediately. Each party to bear own costs on appeal.

D040366 People v. David

The judgment is affirmed. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate
Justices Gilbert Nares and Cynthia Aaron
Clerk: D E Moore

D041657 Koch v. R.E. Staite Engineering, Inc.

Cause called on merits. John Ralph Hillsman, Esq. argued for appellant. Mitchell Griffin, Esq. argued
for respondent. Mr. Hillsman replied. Cause submitted.

D040772 Roy v. City of Carlsbad

Cause called n merits. Jon R. Williams, Esq. argued for appellant. Arlene Prater, Esq. argued for
respondent. Mr. Willaims replied. Cause submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Judith
McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia
Aaron

D042701 In re Jaart B., et al., Juveniles

Cause called on merits. Leslie A. Barry, Esq. argued for appellant. Janice Casillas, Deputy County
Counsel argued for respondent. Ms. Barry replied. Cause submitted.

D040226 Ward v. Bierer

Cause called on merits. Sandra J. Ward, argued for appellant in pro per. Carl Starrett, Esq. argued for
respondent. Ms. Ward replied. Cause submitted.

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January 13, 2004 (Cont'd)

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

D041026 Wilson v. Hall

Cause called on merits. Gerhard Stoll, Esq. argued for appellant. Richard H. Benes, Esq. argued for respondent, Thomas J. Hall, and submitted a 1-page exhibit to the court. Stephen A. Bond, Esq. was present in oral argument for respondent, Thomas J. Hall, but did not argue. Mr. Stoll replied. Cause submitted.

Court recessed at 11 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D E Moore

D041772 ACE Sandblasting Corporation v. Leo's A-C, Inc., et al.

Cause called on merits. Christopher M. Cullen, Esq. was present in oral argument for respondent. Eric B. Kaminsky, Esq. was present in oral argument for respondent. Parties have settled the case.

D041407 Thornton, et al. v. Computer Education Institute, Inc., et al.

Cause called on merits. Keith Zakarin, Esq. argued for appellant. Frank Fox, Esq. argued for respondent. Mr. Zakarin replied. Cause submitted.

D040838 Berger v. Kent

Cause called on merits. Gregory T. Highnote, Esq. argued for appellant. Pieter Daniel Speyer, Esq. argued for respondent. Mr. Highnote replied. Cause submitted.

Court recessed at 1:52 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D041676 Anthony v. Snyder, et al.

Cause called on merits. Ellen Pilsecker, Deputy County Counsel argued for appellant, Board of Supervisors of San Diego County. Brian Charles Fish, Esq. argued for real party in interest-appellant, Barratt American Incorporated. Arthur M. Wilcox, Jr., Esq. argued for respondent. Ms. Pilsecker replied. Mr. Fish replied. Cause submitted.

Court recessed at 2:40 p.m. until Wednesday, January 14, 2004 at 9 a.m.

D041456 People v. Baker

The polygraph condition (paragraph 10n of the probation order) is reversed with directions to the trial court to enter a new order imposing periodic polygraph testing as a condition of probation, but limiting the questions that may be asked to those relating to Baker's compliance with the conditions of his probation or to the crime of which he was convicted. In all other respects, the judgment is affirmed. Aaron, J.; We concur: O'Rourke, Acting P.J., Irion, J.

D042964 In re Vlasich on Habeas Corpus

The petition is denied.

D042907 Brannon et al. v. Superior Court of San Diego County/Crippen

Let a writ of mandate issue directing the superior court to vacate its order of August 22, 2003 and to schedule a hearing at which the parties are given the opportunity to appear and present argument on the motion. Each party to bear its own costs in the writ proceeding. CERTIFIED FOR PUBLICATION
Haller, J.; We Concur: McConnell, P.J., Benke, J.

D039721 People v. Hooper

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
January 14, 2004

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D E Moore

D041230 People v. Hernandez

Cause called on merits. Denise M. Rudasill, Esq. argued for appellant. Lilia Garcia, Deputy Attorney General argued for respondent. Ms. Rudasill replied. Cause submitted.

D041259 Franklin v. North County Ford et al.

Cause called on merits. Scott Metzger, Esq. argued for appellant. Jason D. Dumbeck, Esq. argued for respondent. Mr. Metzger replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D042402 In re Alberto S., et al. Juveniles

Cause called on merits. Suzanne Evans, Esq. argued for appellant, father. William E. Drake, Esq. argued for appellant, mother. Christopher Blake, Esq. argued for the minor. Gary Seiser, Deputy County Counsel argued for respondent. Ms. Evans replied. Mr. Drake replied. Cause submitted.

D041194 Hackman v. American Medical Response et al.

Cause called on merits. Roger A. Geddes, Esq. argued for appellant. Brian Thomas Hackley, Esq. argued for respondent. Mr. Geddes replied. Cause submitted.

Court recessed at 10:41 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D E Moore

D042216 In re Savannah B., a Juvenile

Cause called on merits. Lisa Breakey, Esq. argued for appellant. Anne Fraser, Deputy Attorney General argued for respondent. Ms. Breakey replied. Cause submitted.

D038856 Pardee Construction Company v. Jeld-Wen, Inc.

Cause called on merits. Marcelle E. Mihaila, Esq. argued for appellant/cross-respondent, Jeld-Wen, Inc. Bill Hancock, Esq. argued for respondent/cross-appellant, Vision Glazing. Megan Dorsey, Esq. argued for respondent/cross-appellant, Pardee Construction. Ms. Mihaila replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
January 14, 2004 (continued)

D041293 Acosta, et al. v. Wilder

Cause called on merits. James Parkeson Miller, Esq. argued for appellant. John Thomas Burke, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D042543 In re Cole P., a Juvenile

Cause called on merits. Maryann Marisa Milcetic, Esq. argued for appellant. Debra Barriger, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. argued for the minor. Ms. Milcetic replied. Cause submitted.

Court recessed at 3:30 p.m. until Thursday, January 15, 2004 at 9 a.m.

D043493 In re Valdez on Habeas Corpus

The petition is denied.

D043168 In re Shania F., a Juvenile

The appeal is dismissed. Irion, J.; We Concur: McConnell, P.J., McIntyre, J.

D041177 People v. Carrillo

The judgment is affirmed. The superior court is directed to modify the abstract of judgment to reflect defendant's true name, Alfredo Martinez Carrillo, and to forward an amended abstract to the Department of Corrections. Nares, J.; We Concur: McConnell, P.J., Irion, J.

D043492 Evans v. Superior Court of San Diego County/People

The petition is denied.

D043491 In re McDaniel on Habeas Corpus

The petition is denied.

D043490 In re Marshall on Habeas Corpus

The petition is denied.

D043459 In re Castle on Habeas Corpus

The petition is denied.

D043504 Mortuary et al. v. Superior Court of San Diego County/Hillyer et al.

The petition is denied.

D043324 Sandness v. Workers' Compensation Appeals Board and Henkels & McCoy et al.

The petition is denied.

D043535 Evans v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 14, 2004 (continued)

D043495 In re Johnson on Habeas Corpus

The petition is denied.

D040767 Romo v. Amedex Insurance Company

The request for publication of the opinion is denied.

D042448 In re the Marriage of Lucy and John Carpenter

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
January 15, 2004

D043537 Bozeman v. Superior Court of San Diego County/People
The petition is denied.

D043476 Landa et al. v. Superior Court of San Diego County/Christ et al.
The petition is denied.

D043526 Carr v. Superior Court of San Diego County/Menkes et al.
The petition is denied.

D043421 Qualcomm Incorporated v. Superior Court of San Diego County/Hanig et al.
The petition is denied.

D043417 In re the Marriage of Jose Luis and Ana Ontiveros.
The appeal filed October 27, 2003 is dismissed as not from an appealable order.

D041670 People v. Marin
The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Huffman, J.

D041491 People v. Weatherford
The petition for rehearing is denied.

**D043296 Junius D., v Superior Court of San Diego County/San Diego County Health and
Human Services Agency**
By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices
Alex McDonald and James McIntyre
Clerk: D E Moore

D041205 Pavin v. Pavin
Cause called on merits. Stephen Temko, Esq. argued for appellant. Sharon L. Kalemkiarian, Esq. argued for respondent. Mr. Temko replied. Cause submitted

D031271 Sammis Properties Corporation v. City of Carlsbad
Cause called on merits. Louis E. Goebel, Esq. argued for appellant. Jane Mobaldi, Esq. argued for respondent. Mr. Goebel replied. Cause submitted.

Court recessed at 9:37 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
January 15, 2004 (Cont'd)

D041613 People v. Perry

Cause called on merits. No appearance by appellant's counsel. Charles Ragland, Deputy Attorney General was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D040623 Nelson v. Regents of the University of California

Cause called on merits. Leon J. Saad, Esq. argued for appellant. Fred M. Plevin, Esq. argued for respondent. Mr. Saad replied. Cause submitted.

Court recessed at 10:25 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D E Moore

D041533 Directed Electronics, Inc. v. S & S Limited, Inc.

Cause called on merits. Kristen E. Caverly, Esq. argued for appellant. William Edward Halle, Esq. argued for appellant. Ms. Caverly replied. Cause submitted.

D041162 Barratt American, Inc. v. City of Encinitas et al.

Cause called on merits. Jason G. Brent, Esq. argued for appellant. Jeffrey Vincent Dunn, Esq. argued for respondent. Mr. Brent replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D037871 Sharon S. v. Superior Court/Annette F.

Matter called on merits. John L. Dodd, Esq. argued for petitioner. Charles A. Bird, Esq. argued for real party in interest, Annette F. Judith E. Klein, Esq. argued for Joshua S. Mr. Dodd replied. William E. Blatchley, Esq. was present in oral argument, but did not argue. Matter submitted.

Court recessed at 2:37 p.m. until Friday, January 16, 2004 at 9 a.m.

D043575 Chuma v. Superior Court of San Diego County/People

The petition is denied.

D040627 Padres L.P. v. Henderson

The opinion dated December 17, 2003 is modified. There is no change in judgment.

D043551 In re Drasar on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
January 16, 2004

D042783 F. v. G.

The appeal is dismissed. O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

D040124 Warner v. Breg, Inc., et al.

The summary judgment is reversed and the order granting summary judgment is vacated. The superior court is directed to enter a new order denying defendants' motion for summary judgment and granting their motion for summary adjudication as to Warner's cause of action for breach warranty. Warner is awarded his costs on appeal. Irion, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D042595 In re Maya E., a Juvenile

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Aaron, J.

D042511 People v. Franklin

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.

D041311 People v. Schmidt

The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D041525 People v. Vindiola

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Irion, J.

D043583 In re Zachary W. et al., Juveniles

Appellant's, Daniel W., notice of appeal filed January 8, 2004 from the hearing of October 21, 2003 is dismissed as untimely.

D040356 Wells et al. v. Wildish et al.

The orders are affirmed. Kipp and Wildish are jointly and severally to pay all costs on appeal. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

**D043502 Automobile Club of Southern California v. Superior Court of San Diego
County/River Valley Preservation Project**

The petition is denied.

D043539 Illumina Inc. v. Superior Court of San Diego County/Applera Corporation

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and James McIntyre
Clerk: D E Moore

D041019 Morelan v. Morelan

Cause called on merits. William Arthur Eddy, Esq. argued for appellant. John Knoll, Esq. argued for respondent. Mr. Eddy replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court recessed at 9:30 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D041608 Salus, et al. v. San Diego County Employees Retirement Association

Cause called on merits. Stephen Harley Silver, Esq. argued for appellant. William A. Johnson, Jr., Deputy County Counsel argued for respondent. Mr. Silver replied. Deirdre E. McGrath, Deputy County Counsel was present in oral argument for respondent, but did not argue. Cause submitted.

Court recessed at 9:53 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D043046 Candi D., et al. v. Superior Court

Matter called on merits. Christopher R. Booth, Esq. argued for petitioner, Eddy R. Janice Casillas, Deputy County Counsel argued for respondent. Mr. Booth replied. Matter submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D E Moore

D040917 People v. Williams

Cause called on merits. Carmela F. Simoncini, Esq. argued for appellant. Melissa Mandel, Deputy Attorney General argued for respondent. Ms. Simoncini replied. Cause submitted.

Court adjourned at 2:10 p.m.

D041113 People v. Medina

The petition for rehearing is denied.